

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**IN RE: JOHNSON & JOHNSON  
TALCUM POWDER PRODUCTS  
MARKETING, SALES PRACTICES  
AND PRODUCTS LIABILITY LITIGATION**

**MDL No. 2738**

This Document Relates to:

**3:16-md-02738-FLW-LHG**

Melissa Parsons and Terry Lee Parsons,

v.

Johnson & Johnson,  
Johnson & Johnson Consumer, Inc.  
f/k/a Johnson & Johnson Consumer  
Companies, Inc. and  
Pikeville Radiology, PLLC

Civil Case No. 3:19-cv-21967-FLW

**PLAINTIFFS' MOTION TO REMAND  
AND REQUEST FOR HEARING AND ORAL ARGUMENT**

Come the Plaintiffs, Melissa Parsons and Terry Parsons, by counsel, pursuant to 28 U.S.C. § 1447(c), and move the Court to remand this action back to the Pike Circuit Court, Commonwealth of Kentucky, for the following reasons:

1. This is a single injury personal injury case. The Johnson & Johnson Defendants<sup>1</sup> wrongfully removed this action from state court pursuant to 28 U.S.C. §1441(b). The alleged basis for removal is that Plaintiffs, who are residents of Kentucky, “fraudulently misjoined” a non-diverse Kentucky Defendant, who, along with the Johnson & Johnson Defendants, collectively

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<sup>1</sup> The Johnson & Johnson Defendants include Johnson & Johnson and Johnson & Johnson Consumer Inc. f/k/a Johnson & Johnson Consumer Companies Inc.

caused Plaintiffs' damages. The Third Circuit does not recognize, and this Court has rejected the application of, the fraudulent *misjoinder* doctrine. Moreover, severance is for the state court to decide, and, KRS 411.182, which mandates that responsibility for Plaintiffs' "damages" be apportioned among all defendants, both diverse and nondiverse, in the same action precludes severance of the nondiverse Kentucky Defendant.

2. The First Amended Complaint on its face is not removable because there is not complete diversity of citizenship between Plaintiffs and all Defendants.

3. The Forum Defendant (Pikeville Radiology, PLLC) had been sued and served in the underlying action prior to the Johnson & Johnson Defendants' removal in this matter. Absent some extraordinary basis for this Court to exert Federal Jurisdiction, the Johnson & Johnson Defendants' removal is procedurally defective.

4. The claim of "fraudulent misjoinder" and request for severance otherwise fail for the reasons set forth in Plaintiffs' Memorandum of Law in Support of Motion to Remand submitted herein and incorporated by reference as if fully set forth herein at length.

Plaintiffs respectfully request the Court to remand this case back to the Pike Circuit Court pursuant to 28 U.S.C. §1447(c), and allow for attorney's fees, expenses and costs and for such other and further relief to which Plaintiffs may be justly entitled in law or in equity. Plaintiffs also respectfully request the Court to set this matter for hearing and oral argument in the event the Court is not inclined to immediately remand this matter.

Respectfully submitted,

GARY C. JOHNSON, P.S.C.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of January, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicate on the electronic filing receipt. Parties may access this filing through the Court's system.

I further certify that I served the foregoing on the following via either electronic mail or United States First Class Mail this the 17th day of January, 2020:

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